

**Poland, Disciplinary Court of the Bar Association in Warsaw,
Case no DZ 101/19, disciplinary court of bar association (I-
instance), reference for a preliminary ruling: January 31, 2020.
Judgment of the Court (Third Chamber) of 13 January 2022 (Case
C-55/20)**

Member State

 Poland

Topic

independence, accountability, impartiality

Sector

Disciplinary proceedings; Judicial Ethics; Role of Lawyers

Deciding Court Original Language

Sąd Dyscyplinarny Izby Adwokackiej w Warszawie

Deciding Court English translation

Disciplinary Court of the Bar Association in Warsaw

Registration N

DZ 101/19

C-55/20

Date Decision

National request for a preliminary ruling - 24/01/2020

CJEU judgment - 13/01/2022

ECLI (if available)

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

1. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market - Article 1(5), Article 3(1), Article 4, Article 9(3), Article 10.
 2. Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained - Article 1(1).
 3. Article 47 of the Charter of Fundamental Rights of the European Union.
 4. DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on services in the internal market.
 5. A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court) (C-585/18, C-624/18 and C-625/18, EU:C:2019:982).
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ECtHR Jurisprudence

N/A

Subject Matter

The judgment examines the applicability of Directive 2006/123/EC and the Charter of Fundamental Rights to appeal proceedings brought before a Bar Association Disciplinary Court. It concludes that Article 10(6) of the directive does not have the effect of rendering Article 47 of the Charter applicable in this particular case. The court determines that the proceedings do not fall within the scope of the directive and therefore do not trigger the protection of the right to an effective remedy before a tribunal under the Charter.

Legal issue(s)

The judgment addresses several key issues. Firstly, it examines the applicability of Directive 2006/123/EC and the Charter of Fundamental Rights to appeal proceedings before a Bar Association Disciplinary Court. Secondly, it analyzes the interpretation of Article 10(6) of the directive and its impact on the applicability of Article 47 of the Charter in the case. The court also

discusses the admissibility of the questions raised and clarifies the scope and limitations of Directive 2006/123/EC in relation to disciplinary proceedings. Ultimately, the judgment determines that the specific appeal proceedings in question do not fall within the scope of the directive and, therefore, do not trigger the protection of the right to an effective remedy under the Charter. The judgment refers also to the concept of a "court or tribunal" within EU law. It specifically examines whether the Bar Association Disciplinary Court in Warsaw qualifies as a court or tribunal within the meaning of Article 267 TFEU. Ultimately, it concludes that the Bar Association Disciplinary Court in Warsaw does meet the conditions of a court within the meaning of the EU law and, therefore, the request for a preliminary ruling is admissible.

Request for expedited/PPU procedures

No

Interim Relief

There was no request for interim relief

National Law Sources

1. Ustawa z dnia 26 maja 1982 r. – Prawo o adwokaturze (Law on the Bar) - Article 9, Article 11, Article 39, Article 40, Article 51, Article 58, Article 80, Article 81, Article 82, Article 88a, Article 89, Article 91, Article 91a, Article 91b, Article 91c, Article 95n.
 2. Code of Criminal Procedure - Paragraph 100(8), Article 521, Article 525.
 3. Law on the Public Prosecutor's Office - Article 1(2).
 4. Law on the Supreme Court - Article 24, Article 27(1).
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Facts of the case

In the context of the disciplinary chamber of the Polish Supreme Court, the case involved a challenge to a decision made by a disciplinary agent regarding a lawyer's alleged disciplinary offense. The case gained significance within the broader context of concerns surrounding the independence of the disciplinary chamber and its impact on the rule of law.

The case raised questions about the application of EU law, particularly Directive 2006/123/EC and the Charter of Fundamental Rights. It examined whether the appeal proceedings fell within the scope of the directive and triggered the protection of the right to an effective remedy under the Charter.

The judgment had wider implications for the disciplinary chamber's functioning and the rule of law in Poland. It provided an opportunity for the Court of Justice of the European Union to address concerns about the disciplinary chamber's procedures and decisions, contributing to the ongoing discussion on judicial independence and the rule of law in Poland.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

In the judgment, the court reasoned that the specific appeal proceedings at hand did not fall within the scope of Directive 2006/123/EC on services in the internal market and, therefore, did not trigger the protection of the right to an effective remedy under the Charter of Fundamental Rights of the European Union. The court analyzed the relevant provisions of the directive, particularly Article 9(3) and Article 10(6), which exempt certain aspects of authorization schemes from its application. It held that the present case involved aspects of the authorization scheme that were governed directly or indirectly by other EU instruments, thereby excluding them from the scope of the directive.

The court referred to the legal definitions provided in Article 4 of Directive 2006/123/EC, including the definitions of "service," "authorization scheme," and "requirement." It emphasized the need for a formal decision or implied decision by a competent authority as part of the authorization scheme. The court considered the specific requirements and obligations imposed by national law, such as registration as a member of a profession, appointment to a body, or possession of a professional card, as falling within the concept of an authorization scheme.

Regarding the Charter of Fundamental Rights, the court acknowledged the reference made by the referring court to Article 47, which guarantees the right to an effective remedy and a fair trial. However, it concluded that since the appeal proceedings did not fall within the scope of Directive 2006/123/EC, the protection of the right to an effective remedy under the Charter was not triggered in this case. Therefore, it did not engage in a detailed analysis of the Charter provisions.

Throughout the judgment, the court extensively referred to EU legal sources, particularly Directive 2006/123/EC, and analyzed its recitals and provisions. It interpreted the directive in light of its objectives and purpose, emphasizing the wide variety of services covered by the directive and the need to avoid conflict with other EU acts governing specific sectors or professions. The court also mentioned Directive 98/5/EC, which facilitates the practice of the legal profession in a Member State other than the one where the qualification was obtained.

Overall, while the Charter was mentioned in the judgment, its detailed analysis was not necessary due to the court's conclusion that the appeal proceedings did not fall within the scope of Directive 2006/123/EC. The primary focus of the legal reasoning was on interpreting and applying the provisions of the directive and assessing their applicability to the case at hand.

Relation of the case to the EU Charter

The EU Charter was referred to in the context of Article 47, which pertains to the right to a fair trial. The national judge was questioning whether the Bar Association Disciplinary Court, which was required to inform the parties of the possibility for them to bring an appeal against its decision, should disapply certain national laws and inform those parties about the possibility of bringing an appeal before the Criminal Chamber of the Supreme Court instead of Disciplinary Chamber of Supreme Court, which cannot be regarded as independent and impartial court. However CJEU decided that Article 47 of the EU Charter did not apply in this case because the proceedings in question did not fall within the scope of EU law.

Relation between the EU Charter and ECHR

The case does not address the relationship between the Charter of Fundamental Rights and the European Convention on Human Rights.

Use of Judicial Interaction technique(s)

The judicial interaction techniques used in this case include:

Preliminary Reference: The national court referred questions to the CJEU for a preliminary ruling under Article 267 TFEU. The CJEU was asked to interpret Directive 2006/123/EC and Article 47 of the Charter of Fundamental Rights of the European Union.

Consistent Interpretation: The CJEU interpreted the national law in light of EU law. It examined the national law and its application in the context of Directive 2006/123/EC and Article 47 of the Charter of Fundamental Rights of the European Union.

Disapplication of National Law in Favour of EU Law: The national court questioned whether it should disapply certain national laws and inform the parties about the possibility of bringing an appeal before the Criminal Chamber of the Supreme Court instead of the Disciplinary Chamber of the Supreme Court, which cannot be regarded as an independent and impartial court.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The request for preliminary ruling mentions that the Sąd Najwyższy (Supreme Court), in its judgment of 5 December 2019, case reference III PO 7/18, ruled that the Disciplinary Chamber is not an independent and impartial tribunal for the purposes of Article 47 of the Charter. One of the factors that led the Sąd Najwyższy (Supreme Court) to that conclusion was the influence of the executive, and especially the Minister for Justice, on the composition of that body.

Regarding the constitutionality review, the document does not explicitly mention a constitutionality review.

The document does not explicitly provide a reason for citing the jurisprudence of a foreign Constitutional Court.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

As described above the request for preliminary ruling mentions that the Sąd Najwyższy (Supreme Court), in its judgment of 5 December 2019, case reference III PO 7/18, ruled that the Disciplinary Chamber is not an independent and impartial tribunal for the purposes of Article 47 of the Charter. One of the factors that led the Sąd Najwyższy (Supreme Court) to that conclusion was the

influence of the executive, and especially the Minister for Justice, on the composition of that body.

Strategic use of judicial interaction technique (purpose aimed by the national court)

The court is seeking to determine whether it should disregard certain national provisions in order to ensure the proceedings align with Article 47 of the EU Charter, which guarantees the right to an effective remedy and a fair trial. This is particularly relevant in situations where the body competent to hear an appeal on a point of law is not considered an independent and impartial tribunal under Article 47 of the Charter.

The court is also grappling with an institutional conflict, as one of the factors that led to the conclusion that the Disciplinary Chamber of the Supreme Court is not an independent and impartial tribunal was the influence of the executive, especially the Minister for Justice, on its composition.

Impact on Legislation / Policy

This particular CJEU ruling did not contribute to legislative changes, as the CJEU ultimately concluded that EU law does not apply in this particular case, under its circumstances. In general, however, the CJEU's jurisprudence regarding the Disciplinary Chamber of the Supreme Court has translated into Polish legislation on the subject.

Notes on the national implementation of the preliminary ruling by the referring court

As this was a disciplinary proceeding before the Bar Court and there is no electronically accessible case law database of this court, we do not yet know the final outcome. However, in view of the substantive ruling of the CJEU, which stated that: In the light of the foregoing, Article 10(6) of Directive 2006/123 is not applicable in the context of the proceedings currently pending in the case referred to the Court of Justice. Consequently, nor is that provision, in the same context, capable of rendering Article 47 of the Charter applicable, rather, there is no space for the outcome of the case not to comply with the CJEU's guidelines in its answer to the preliminary question.

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

The national court in its request for preliminary ruling does mention the case law of the Court of Justice of the European Union (CJEU). It refers to several CJEU judgments, including:

The judgment of 11 June 2015, *Berlington*, C-98/14

The judgment of 1 June 2010, *Blanco Pérez and Chao Gómez*, C-570/07 and C-571/07

The judgment of 19 July 2012, *Garkalns*, C-470/11

The judgment of 15 November 2016, *Ullens de Schooten*, C-268/15

These cases are mentioned in the context of discussing the cross-border nature of the case and the jurisdiction of the court (Page 7).

The document also refers to the national case law, specifically the judgment of the Sąd Najwyższy (Supreme Court) of 5 December 2019, case reference III PO 7/18, which found that the SC

Disciplinary Chamber is not an independent and impartial tribunal for the purposes of Article 47 of the Charter (Page 1, Page 7).

However, the document does not mention any case law of the European Court of Human Rights (ECtHR) or the Explanations relating to the Charter of Fundamental Rights.

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

The document does not mention any soft law instruments such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports.

Did the national court take into account national case law on fundamental rights?

Yes, the national court did take into account national case law on fundamental rights. Specifically, it referred to the judgment of the Sąd Najwyższy (Supreme Court) of 5 December 2019, case reference III PO 7/18, which found that the SC Disciplinary Chamber is not an independent and impartial tribunal for the purposes of Article 47 of the Charter. This case law was used to inform the court's understanding of the application of fundamental rights in the context of the disciplinary proceedings at hand.

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

This was the court of last resort in disciplinary proceedings.

Impact on national case law from the same Member State or other Member States

Given the substantive content of the CJEU's ruling, which stated that, in light of the above, Article 10(6) of Directive 2006/123 is not applicable to the proceedings currently pending in the case referred to the Court of Justice. Consequently, this provision cannot also, in the same context, lead to the application of Article 47 of the Charter, since the case did not have its further application in the national context.

(Link to) full text

<https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=C-55%252F20&for=&jge=&dates=&language=en&pro=&cit=none%252CC%252CCJ%252CR%252C2008E9>

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